IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 7780 of 2004(A)

OS.100/2000 of SUB COURT,KATTAPPANA
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PETITIONER:

K.V.SEBASTIAN, S/O.LATE K.I.VARKEY,
KARIMPANEL HOUSE, KUNNUMBHAGAM, CHIRAKKADAVU VILLAGE, KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

RESPONDENTS:
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1. **K.V..ABRAHAM, S/O.LATE K.I.VARKEY, KARIMPANAL HOUSE, PADAPPADY, PARATHODU, KUNJIRAPPALLY VILLAGE, KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.**

2. **GRACY ABRAHAM, W/O.K.V.ABRAHAM, IN -DO- -DO-**

3. **K.I.VARKEY, S/O.K.V.ABRAHAM, IN -DO- -DO-**

4. **K.I.ABRAHAM, S/O. DO. IN -DO- -DO-**

5. **K.I.JOSEPH, S/O.DO. IN -DO- -DO-**

6. **K.I.THOMAS, S/O. DO.IN -DO- -DO-**

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7. MARY JOSE, W/O.LATE K.V.JOSEPH,
KARIMPANAL HOUSE, THURUTHIPPADAVU KARA,
KOOVAPPALLY, EDAKKUNNAM VILLAGE, KANJIRAPPALLY
TALUK, KOTTAYM DISTRICT.

8. K.J.VRKEY, S/O. DO. IN. -DO- -DO-

9. BEENA DOMINIC, D/O. IN -DO- -DO-

10. REENA JOSEPH, D/O. DO. IN -DO- -DO-

11. MARIAMMA ABRAHAM, D/O. IN -DO- -DO-

12. LISA GEORGE, D/O. IN -DO- -DO-

13. THRESAMMA ALEX, D/O. DO IN -DO- -DO-

14. ROSY JOSE, D/O. DO IN -DO- -DO-

15. K.V.GEORGE, S/O.LATE K.I.VARKEY,
KARIMPANAL HOUSE, KANJIRAPPALLY VILLAGE,
KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

16. VARKEY GEORGE, S/O.K.V.GEORGE,
IN -DO- -DO-

17. K.I.THOMAS, S/O.LATE K.T.ABRAHAM,
KARIMPANAL, KUNNUMBHAGAM, CHIRAKKADAVU VILLAGE,
KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

18. CATHREINE THOMAS, W/O.LATE K.V.THOMAS,
KARIMPANAL HOUSE, NJALLAMTTOM KARA,
VIZHIKKATHODU, KANJIRAPPALLY VILLAGE,
KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

19. ANNAMMA THOMAS, D/O. DO. IN -DO- -DO-

20. ROSYLINE FRANCIS, D/O. DO. -DO- -DO-

21. RIA JOSEPH, D/O. DO. IN -DO- -DO-

22. GEORGE SEBASTIAN, S/O.K.V.SEBASTIAN,
KARIMPANAL HOUSE, KUNNUMBHAGAM KARA,CHIRAKKADAVU
VILLAGE, KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

23. K.V.KURIAN, S/O.LATE K.I.VARKEY,
KARIMPANAL HOUSE, KANJIRAPPALLY VILLAGE,
KANJIRAPPALLY TALUK, KOTTAYM DISTRICT.

24. GEORGE KURIAN, S/O.K.V.KURIAN, IN
-DO- -DO-

25. RENJU KURIAN, S/O.DO. IN -DO- -DO-

26. K.V.NICHOLAS, S/O.K.V.NICHOLAS, IN
-DO- -DO-

27. VARKEY NICHOLAS, S/O.K.N.NICHOLAS,
IN -D0- -DO-

28. KAVERI CONDUCTORS LTD., A PRIVATE LTD.
COMPANY, HAVING ITS HEAD OFFICE AT C-11,
INDUSTRIAL ESTATE, PAPPANAMCODE KARA, NEMAM VILLAGE
TVM. TALUK, REP. BY ITS MD, K.RAJENDRAKUMAR, S/O.
KRISHNAPILLAI, RESIDING AT "VIJAYA BHAVAN",
KOWDIAR, PERRORKADA VILLAGE,
THIRUVANANTHAPURAM.

29. VENAD CONDUCTORS PVT. LTD., A PVT. LTD., COMPANY HAVING ITS HO AT C-12, INDUSTRIAL ESTATE, PAPPANAMCODE KARA, NEMAM VILLAGE,TVM. TALUK, THIRUVANANTHAPURAM DISTRICT, , REP. BY ITS MANAGING DIRECTOR, M.N.VISWANATHAN CHETTIAR, S/O.C.R.NARAYANAN CHETTIAR, RESIDING AT GIRISH BHAVAN,KANJIRAVILA, PAPPANAMCODE KARA, NEMAM VILLAGE, THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.K.SREEGESH
SRI.V.G.ARUN
SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SMT.MEENA.A.
SMT.M.R.MINI
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN
SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.7780/2004 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMMON ORDER IN I.A.192/03, 195/03 & 203/03 IN O.S.100/00 OF THE SUB COURT, KATTAPANA DTD. 1/11/2003.**

EXT.P2: **COPY OF THE ORDER IN I.A.1564/03 IN O.S.100/2000 OF THE SUB COURT, KATTAPANA DTD. 7/02/2004.**

EXT.P3: **COPY OF THE AFFIDAVIT & APPLICATION FOR FRESH COMMISSION DTD. 7/02/04 (I.A.156/04).**

EXT.P4; **COPY OF THE COUNTER AFFIDAVIT OF 1ST RESPONDENT IN I.A.156/04 IN O.S.100/2000 DTD. 20/02/04.**

EXT.P5: **COPY OF THE ORDER IN I.A.156/04 IN O.S.100/00 OF THE SUB COURT, KATTAPANA DTD. 21/02/2004.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.7780 of 2004

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Dated: 21st June, 2007

JUDGMENT

The grievance of the petitioner who is the plaintiff in a suit for fixation of boundary and consequential injunction is that on account of various orders which have been passed by the trial court, the scope of the dispute which is expected to be settled in a suit for fixation of boundaries has been expanded resulting in never ending delay in the matter of final disposal of the suit. It is stated that a total extent of 515 acres of land in Mlappara Village of Peerumade Taluk was partitioned amongst 15 sharers in the year 1986 and the petitioner plaintiff was allotted 59.34 acres described in schedule E to that partition deed. In 1999 respondents 28 and 29 took assignment of 46.12 and 23.3 acres from the allottees of the properties described in schedules F and N of the above partition deed and in the wake of certain pending disputes between the petitioner and the aforementioned respondents, the suit was instituted contending that there is no definite demarcation of the boundaries of the property allotted to him and that respondents 28 and 29 are attempting to commit trespass and put up fencing in an illegal manner. A local inspection Commissioner reported that there are no clear boundaries

and on the basis of an allegation that the order of temporary injunction granted in the case was violated, a petition under Order XXXIX Rule 2A was also filed and an Advocate Commissioner was taken for establishing the alleged violation. Respondents 28 and 29 the principal contestants contended that there is a thodu lying as a boundary between the properties and that it is not necessary to fix the boundary through court since natural boundary thodu already exists. A work memo was submitted by those respondents before the Advocate Commissioner who reported that there was no demarcation on the ground. The Commissioner noted the existence of a 1 ½ feet vide thodu and the circumstance that six months old saplings were planted on the thodu. Two commission applications were filed by two sets of defendants including respondents 28 and 29. Respondents 28 and 29 wanted several matters to be noted by the Advocate Commissioner including the alleged fact that their property was well demarcated and improved. They wanted the entire properties to be surveyed and measured with reference to the partition deed and also a plan referred to in their written statement. A commissioner was appointed and he filed Ext.C1 report and C1(a) plan with the help of the Taluk Surveyor. After 12 visits and survey it was reported that it

was not possible to demarcate the properties with reference to the plan. It was reported that the kayyalas could not be termed as definite boundaries. Petition I.A.No.192/03 was filed by respondents 28 and 29 to set aside the commission report and plan. The trial court after examining the Advocate Commissioner and the surveyor passed an order remitting Ext.C1(a) plan to the surveyor with certain directions and after the remittance Ext.C2 report and Ext.C2(a) plan were filed before the court. The court below has on 1.11.2003 passed an order purporting to set aside Exts.C1, C1(a), C2 and C2(a). The petitioner filed I.A.No.1564/03 for clarifying Ext.P1 order. According to the petitioner, it was not necessary to set aise the entire report. At the most what was necessary was to set aside only the plan related to survey alone. But the court dismissed the petitioner's application by Ext.P2 order. Thereafter respondents 28 and 29 filed Ext.P3 application for issuance of a fresh commission for reporting as many as 12 matters. To Ext.P3 the petitioner filed Ext.P4 counter affidavit contending that many of the items mentioned in Ext.P3 were completely beyond the scope of the suit. The court has passed Ext.PP5 order allowing Ext.P3. It is impugning Exts.P1, P2 and P5 that the present Writ Petition has been filed seeking inter alia quashment

of Exts.P1, P2 and P5 and an order allowing I.A.No.1564/03 filed by the petitioner in full.

2. I have heard the submissions of Mr.P.B.Krishnan, Advocate for the petitioner and those of Mr.K.V.Sohan, Advocate for the contesting respondents.

3. Notwithstanding the strenuous and persuasive submissions of Mr.Krishnan, I am not inclined to set aside Ext.PP5 order completely. However I find force in the submission of Mr.Krishnan that it was not necessary to set aside the Commissioners reports which are also seen set aside under Ext.P1. It was sufficient if the plan submitted by the Commissioner, namely Ext.C1(a) and Ext.C2(a) alone were set aside. Thus Exts.P1 and P2 orders will stand modified setting aside Exts.C1 (a) and C2(a) plans alone and remitting the Commissioner's report to the Advocate Commissioner who is now appointed as per Ext.P5. The court will ensure that as far as possible the commission warrant to be issued under Ext.P5 is given to the same Commissioner who prepared Exts.C1 and C2. Though I notice some merit in the submission of Mr.Krishnan that some of the aspects mentioned in the commission application pursuant to which Ext.P5 order was passed were beyond the scope of the suit, I do not propose to interfere with Ext.P5. At the

same time I permit the petitioner to file an application before the court below seeking deletion of of those aspects in Ext.P4 commission application which are totally irrelevant for resolving the issues in the suit. The court below will consider such application if filed within two weeks of the petitioner receiving copy of this judgment and pass early orders on the same with notice to all the parties. Once orders are passed on that application, the court below will issue prompt and appropriate directions to the Advocate Commissioner from time to time and thereby ensure that the Commissioner executes the work and files final report at the earliest.

4. If it is seen that the Commissioner does not file report within one year of the petitioner receiving copy of this judgment, it is open to the petitioner to approach this court again voicing his grievance.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**